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EXAMINER

AFREMOVA, VERA

ART UNIT PAPER NUMBER

1651

DATE MAILED: 02/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/018,738	QUESADA MUNIZ ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Vera Afremova	1651	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on 28 November 2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☐ Claim(s) 1,3-18 and 21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1,3-18 and 21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Status of claims***

Claims 1, 3-18 as amended and new claim 21 [11/28/2003] are pending and under examination.

Claim 2 was cancelled by applicants [11/28/2003]. Claims 19 and 20 were cancelled by applicants [Paper No. 7 filed 5/19/2003].

### ***Response to Arguments***

Applicants' amendments and arguments filed 11/28/2003 have been fully considered but they are not persuasive for the reasons below.

### ***Claim Rejections - 35 USC § 112***

#### ***Indefinite***

Claims 1, 3-18 as amended and new claim 21 remain/is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention for the reasons as explained in the prior office action.

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Claim 1 as amended remains indefinite as related to “the mixture of organic and inorganic substances”. First, the phrase “the mixture” (claim 1, line 11) lacks antecedent basis in the claim. Further, it remains unclear whether the same ingredient could be within both mixtures intended for the purpose of establishing ratio of generic components. For example: substances of protein origins are organic substances and, thus, it is uncertain what components are included in the organic/inorganic mixture and what are excluded therefrom. It is uncertain whether inhibitor would be assigned to any mixture and what mixture. Thus, assignment of components to the claimed mixtures and establishing the claimed ratio(s) are impaired as discussed in the prior office action and further below.

Claims 7 and 10 as amended remain indefinite due to phrase “preferably” because this phrase does not point out whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Since the applicants appear to indicate that the compounds of the claim 7, but not others, are intended (see response filed 11/28/2003 at page 18, last par.), it is suggested to delete the phrase “preferably”.

*New matter*

Claims 1, 3-18 and 21 as amended are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

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The second ratio of the medium components (0.5: to 2:1 ratio) in the claimed compositions is presently required to be the ratio of proteins to organic/inorganic substances. However, in the original claims and in the as-filed specification (page 5, par. 1) this second ratio is the ratio of organic/inorganic substances to proteins. Although the whole range of possible combinations includes 1:1, and, thus, the 1:1 ratio falls within range of the original disclosure, there are still different proportions outside of the 1:1 combination. Therefore, the fact and the issue of a new matter exist.

The insertion of this limitation is a new concept because it neither has literal support in the as-filed specification by way of generic disclosure (page 5, par. 1), nor are there specific examples of the newly limited genus that would show possession of the concept of the use of the presently claimed inverted ratio. The exemplified disclosure (page 11, example 1) cannot be properly evaluated because applicants do not indicate what organic and what inorganic substances are included in the calculations. For example: proteins are also "organic" substances and water is also inorganic substance. Besides, no particular exemplified calculations are disclosed. Thus, there is no sufficient support for the new ratio as presently claimed. This is a matter of written description, not a question of what one of skill in the art would or would not have known. The material within the four corners of the as-filed specification must lead to the generic concept. If it does not, the material is new matter. Declarations and new references cannot demonstrate the possession of a concept after the fact.

***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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Claims 1, 2 and 7 as amended and new claim 21 remain/is rejected under 35 U.S.C. 102(b) as being anticipated by US 5,723,308 for the reasons as explained in the prior office action and for the reasons below.

Claims are directed to a composition for detecting and counting Gram-negative microorganisms wherein the composition comprises a protein substance of microbial origin, an inhibitor of Gram-negative microorganism and some organic and inorganic substances, wherein the protein substance and the Gram-positive microorganism inhibitor are present at ratio 2:1 to 24:1 and wherein the protein substance and some organic/inorganic substances are present at ratio 0.5:1 to 2:1 (new ratio). Some claims are further drawn to the use of inhibitors such as bile salts in the composition. Some claims are further drawn to the compositions in a dry form.

The cited patent US 5,723,308 is relied upon as explained in the prior office action. It teaches the use of yeast extract as “microbial origin autolysates or hydrolysates” in the microbial culture medium composition comprising at least one particular “substance(s) of protein origin” as required for the presently claimed invention. In addition, with respect to new claim 21, the composition of the cited US 5,723,308 is also present in a dry state/form (col. 2, line 56).

In particular, US 5,723,308 discloses a medium composition for detecting or identifying microorganisms belonging to *Enterobacteriaceae* wherein the composition comprises (see col. 2, lines 42-45) a protein substance of microbial origin (yeast extract, 9 g), inhibitor of Gram-positive microorganism (bile salts, 1.5 g) and some other organic/inorganic substances, for example: 5 g of sodium chloride and 1.25 g of phenol red. The ratio of components in the composition of the cited patent is within the claimed ranges and, thus, identical to that is claimed. For example: the ratio of microbial protein to inhibitor is 9:1.5 and the ratio of

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microbial protein to organic/inorganic substances is 9:6.25. The invention as claimed does not identify what are the particular “organic and inorganic substances” and what “organic” substances are included in the calculation of the ratio(s). Thus, the ratio of microbial protein to organic/inorganic substances is not necessarily required to incorporate all organic/inorganic components that are disclosed in the composition of the cited patent.

Therefore, the cited patent US 5,723,308 is considered to anticipate the claimed invention because the cited composition comprises all components as required for the claimed composition.

With respect to the cited document applicants appear to admit that the ratio of components is the same or substantially the same as intended for the instant invention (see response page 9, last 3 lines).

The applicant's argument that the composition of the Mach patent {US 5,723,308} does not allow to differentiate bacterial species within the genera of *Salmonella* or *Pseudomonas* (response page 10, par. 1) is not found persuasive with respect to the claimed invention. The presently claimed invention is a composition as claimed. The presently claimed invention is not drawn to applications related to differentiation of the species within the genera of *Salmonella* and/or *Pseudomonas* as argued. Moreover, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. The composition of the cited patent is suitable for detecting or identifying microorganisms belonging to *Enterobacteriaceae*

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including coliforms of the Gram-negative microbes belonging to *E.coli*. Thus, the composition is capable to perform the same function as intended for the presently claimed invention.

Claim rejection under 35 U.S.C. 102(b) as being anticipated by US 5,194,374 [A] has been withdrawn. The insertion of new matter into the claims has necessitated of the claimed ratio(s) would be impaired in the absence of limitations drawn to particular components in each mixture and in the mixture of "organic/inorganic substances" in particular. Moreover, applicants appear to admit that the ratio of the components in the medium of US 5,194,374 is the same or substantially the same as intended for the instant invention (response page 9, last 3 lines).

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 3-18 as amended and new claim remain/is rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,194,374 [A] taken with the references by Atlas [U] and by Davis et al. [V] as explained in the prior office action and for the reasons below.

Claims are directed to a composition for detecting and counting Gram-negative microorganisms wherein the composition comprises 3 major groups of components that are protein substances, Gram-positive microorganism inhibitors and a mixture of organic and inorganic substances, wherein in the composition the claimed components are present at particular ratio(s). The protein substances and the Gram-positive microorganism inhibitors are present at ratio 2:2 to 24:1. The proteins, organic and inorganic substances are present at ratio

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0.5:1 to 2:1. The protein substances in the composition are the microbial hydrolyzates or the hydrolyzates of other natural proteins including beef heart, milk and egg yolk. Some claims are further drawn to the use of inhibitors such as cholic or deoxycholic acids or bile salts in the composition. Some claims are further drawn to the use of silicates, pH indicators, 1,2-propanediol as alcohol, chromogenic substances and growth promoting substances for Gram-negative microorganisms. Some claims are further drawn to the amounts of components, pH, gelling agents or agar in the composition. Some claims are further drawn to the use of growth promoting substances for the Gram-negative microorganisms such as magnesium chloride, sodium carbonate, creatinine, cystine and/or cysteine in the composition. Some claims are further drawn to the compositions in a dry form.

US 5,194,374 [A] is relied upon as explained in the prior office action and repeated herein below.

US 5,194,374 [A] is relied upon for the disclosure of a microbial culture medium composition intended for the same purpose as the claimed invention such as detecting or identifying Gram-negative microorganisms including *Salmonella* wherein the composition comprises protein substances, inhibitors of Gram-positive microorganisms and other organic/inorganic substances with the similar, if not the same, ratio(s) of components as encompassed by the present invention. The major groups of ingredients in composition of the cited patent are the same as required by the claimed invention as it was explained in the prior office action and repeated herein below.

For example: the composition comprises (see example 2) protein substances (generic peptones and yeast extract, total 7 g), inhibitor of Gram-positive microorganisms (deoxycholate,

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1 g) and inorganic substances (silica, 16 g). The total ratio of components in the composition of the cited patent is either substantially similar to that is claimed (for example: 7:1 and 16:7) or similar, particularly in view that the cited composition is suitable for detection of the same microorganisms as intended for the claimed invention including *Salmonella* and also in view that assignment of ingredients to each submixture is uncertain as claimed. The composition of the cited patent also comprises pH indicator such as neutral red (0.03 g for about 50 g of the total dry mixture or 0.06% in total dry mixture), alcohol such as 1,2-propanediol (10 g/L), chromogenic substances including X-gal beta-glucosidase substrate such as bromochloroindoxylgalactoside (0.1 g for about 50 g of the total dry mixture or 0.2% in total dry mixture), growth promoting substances for Gram-negative microorganisms such as water and gelling agent or agar (example 2). The cited composition for detecting and culturing *Salmonella* is considered to have a neutral pH and thus, it is within the claimed range 6.8-7.4, particularly in view that it is intended for detecting the same Gram-negative group of microorganisms including *Salmonella* as claimed and/or intended.

The cited patent teaches incorporation of yeast extract and generic peptones, that are hydrolyzates of natural proteins, but it is silent with regard to origins of proteins within the "peptones". The cited patent is silent about some other organic/inorganic ingredients commonly used in the media for detecting or identifying Gram-negative microorganisms including *Salmonella* such as magnesium chloride, sodium carbonate, creatinine, cystine and/or cysteine.

However, the references by Atlas [U] and by Davis et al. [V] are relied upon for the missing disclosure.

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For example: the references by Atlas [U] teaches a large variety of microbial media including media for detecting or identifying Gram-negative microorganisms including *Salmonella* wherein the media comprise cystine and/or cysteine, magnesium, sodium, chloride and carbonate (page 507, page 763, page 799, page 871) as well as natural protein hydrolysates or substances including beef, yeast, milk and egg proteins or hydrolyzates (pages 507, 788, 799, 871 and 872).

The reference Davis et al. [V] teaches the use of creatinine in the medium for intended for selective killing of Gram-positive and Gram-negative microorganisms including *Salmonella* (abstract or Fig. 4).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the claimed invention was made to modify the medium composition of US 5,194,374 [A] by adding ingredients which are commonly used in the microbial media as taught by Atlas [U] and Davis et al. [V] with a reasonable expectation of success in detecting or identifying Gram-negative microorganisms including *Salmonella* because all claimed medium ingredients have been known and used in the microbiological media for selection and/or enrichment of Gram-negative microorganisms including *Salmonella*. It is well known that it is prima facie obvious to combine two or more ingredients each of which is taught by the prior art to be useful for the same purpose in order to form a third composition which is useful for the same purpose. The idea for combining them flows logically from their having been used individually in the prior art. In re Pinten, 459 F.2d 1053, 173 USPQ 801 (CCPA 1972); In re Susi, 58 CCPA 1074, 1079-80; 440 F.2d 442, 445; 169 USPQ 423, 426 (1971); In re Crockett, 47 CCPA 1018, 1020-21; 279 F.2d 274, 276-277; 126 USPQ 186, 188 (1960). The use of particular amounts or concentration

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ranges of particular ingredients are considered to be within the purview of one having ordinary skill in the art of microbiological media. Thus, the claimed invention as a whole was clearly prima facie obvious, especially in the absence of evidence to the contrary.

The claimed subject matter fails to patentably distinguish over the state art as represented by the cited references. Therefore, the claims are properly rejected under 35 USC § 103.

In response to the office action applicants presented extensive arguments and comparative evaluations of the effects of the applicants' medium and ingredients and the prior art media and ingredients. However, taken as the whole the applicants' arguments are mostly directed to the intended use of the claimed composition rather than to the structural differences. The invention as argued does not commensurate in scope with the scope of the claims in order to properly consider and to evaluate evidence, if any, probative of unexpected result.

With respect to the claimed ratio(s) it has been noted that any meaningful evaluation is impaired in the absence of proper identification of particular ingredients and their particular amounts in the claimed composition. For example: applicants appear to argue that the specific protein substances have "higher" effects in comparison with the state of the art effects (page 9, last 4 lines). However, for example, the higher amounts of the prior art substances are reasonably expected to compensate for the similar "higher" effects. The claimed composition is not limited by amounts of particular substances but by the relative ratio(s) of some unidentified "organic and inorganic substances".

In the response papers in the table A (page 10, par. 4 and pages 24-26) Applicants presented an extensive comparative evaluation of the effects of the prior art media cited in the

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office action and the “composition according to the present invention”. However, it is unclear as argued what components or combinations of components in the applicants’ medium would provide different effects or better effects than the prior art medium components/combinations of components. Thus, the structural differences between compositions in the table A as argued cannot be established.

In the specification tables 2 and 3 (pages 13-14) Applicants appear to compare the particular medium of the example 1 (page 11) with the prior art medium “RA” or Rambach Agar. However, the fact that “Rambach Agar” bears the same name as the inventor of the cited US 5,194,374 does not necessarily means that the medium of the cited US 5,194,374 is compared to the applicants’ particular medium in the specification tables. The contents of the “Rambach Agar” are not pointed out in the as-filed specification. Moreover, the instant claims are not limited to the particular medium of the example 1.

Further, with regard to the use of the specific combination of “beef heart pancreatic or papaic digest together with dried egg yolk proteins” as argued (response page 10, last par.) it is noted that the applicants’ medium that is compared to the prior art “Rambach Agar” does not contain any egg yolk proteins (specification example 1, page 11). Furthermore, none of the instant claims is limited to combination of at least two particular protein hydrolyzates. The invention as claimed is drawn to the use of either one particular protein hydrolyzate (claim 1) or it does not indicate the others (claims 3-6).

Thus, the scope of the showing does not commensurate with the scope of claims to consider evidence probative of unexpected results, for example. In re Dill, 202 USPQ 805 (CCPA, 1979), In re Lindner 173 USPQ 356 (CCPA 1972), In re Hyson, 172 USPQ 399 (CCPA

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1972), In re Boesch, 205 USPQ 215; (CCPA 1980), In re Grasselli, 218 USPQ 769 (Fed. Cir. 1983), In re Clemens, 206 USPQ 289 (CCPA 1980). It should be clear that the probative value of the data is not commensurate in scope with the degree of protection sought by the claims.

Although applicants appear to argue that “beef heart hydrolyzate” is different from the commonly used generic peptones in microbiological media for its nutritional value (response page 12, table B), the cited art also teaches the use of “beef extract” and “heart digest” in the microbiological media with the similar components and for the same purpose of detecting and counting Gram-negative microorganisms (see the reference by Atlas at page 788, col. 2). Applicants also admit that “beef heart hydrolysate” was used in the prior art microbiological medium formulations, for example: in the “Columbia CAN Agar” (response page 11, par. 2). Further, the fact that the prior art “Columbia CAN Agar” as argued might demonstrate some different effects towards Gram-positive and Gram-negative microorganisms does not indicate that the nutrient substances of the “beef heart hydrolysate” in the “Columbia CAN Agar” are used for a different purpose/effect but rather that the inhibitors of the Gram-positive microorganisms were most likely absent in the “Columbia CAN Agar”. With regard to the instant case, the medium of the cited Rambach patent includes both generic peptone and particular yeast extract together with the inhibitor of Gram-positive microorganisms wherein the inhibitor provides for the effects as argued. Thus, the substitution of one protein hydrolyzate for another, whether “beef heart hydrolyzate” or “beef extract” or “heart digest” or meat peptone, is still considered to be substitution of equivalent nutrients (protein hydrolyzates of complex and/or unidentified structures and constitution) with respect to the claimed invention.

Applicants appear to argue the criticality of “dehydrated” egg yolk proteins (page 14, par. 2) over emulsions of egg yolk. This argument is not well taken. First, the egg yolk in the cited Atlas reference (page 507, col. 2) appears to be in the powdered form since all components are presented in grams or in dry weight units and, further, dissolved in water. Moreover, the differences, if any, would be eliminated when the dried egg yolk is dissolved in the water of microbial culture medium. The detection and counting of microorganisms require the use of water for microbial growth.

Applicants’ tables (pages 15-16) in the response papers have been considered as related to the nutritional value of the yeast extract in the “Rambach” formulations. However, the prior art references teach incorporation in the microbiological media of the materials that are argued. Moreover, the medium of the cited Rambach patent provides nutritional peptones in addition to the yeast extract materials.

Applicants appear to argue that the claim 18 is essential for the present invention since the pH value is critical. Yet, the pH value that is claimed is regular pH value in the similar microbiological media with similar components as demonstrated by Atlas, for example. Although the cited Rambach patent is silent with respect to the particular pH in the particular composition, the cited composition for detecting and culturing *Salmonella* of the Rambach patent is considered to have a neutral pH or to function within the same pH ranges as intended for the instant invention since the Rambach’s composition incorporates the same pH indicator “neural red” as required for the claimed invention (claim 10) and since it is intended for detecting the same Gram-negative group of microorganisms including *Salmonella* as claimed and/or intended.

Applicants appear to argue the new use of the new substance in the culture medium such as “diatomaceous earth” (sentence bridging pages 14 and 15 and table D at page 22). However, the diatomaceous earth cannot be reasonably considered as a new substance in microbiological medium. Without changing the core of the claim rejection, the following patents are cited as the references of interest in response to the applicants’ arguments in order to demonstrate that diatomaceous earth is not a new substance in the microbial media and that silica gel (used in the Rambach patent composition) and “diatomaceous earth” are both used as inert carriers or inert absorbents and, thus, they are both used for the same purpose as the silica gel in the medium of the cited Rambach’s patent (example 2). For example: see abstract of NL 27804. Even, if they provide some improved effects, they are still both equivalent “improvers”, for example: see abstract of EP 605221. Thus, the argument or fact that applicant has recognized another advantage of the “diatomaceous earth” cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985). Moreover, the instant claims are directed to a composition not to the method of detecting *Pseudomonas* as argued (table D, page 22). With regard to the claim rejection, the structural difference between the use of silica gel alone in the composition of the Rambach patent and the mixture of silica and diatomaceous earth in the instant claims (claim 9) might be the presence of magnesium in diatomaceous earth as a source of “inorganic” nutrient for microorganisms. However, inorganic source of magnesium is regularly included in the microbiological medium as demonstrated by Atlas.

We regret any inconveniences due to the typing error in the last office action in the phrases “creatine/creatinine”. The claimed invention requires creatinine (claim 15). However,

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applicants appear to acknowledge that the cited reference by Davis clearly teaches incorporation of creatinine in the microbiological medium with chlorides in order to prevent killing of Gram-negative microorganisms due to the presence of chlorides. The applicants' argument that the Davis' technique has no relation with the present invention (page 23, par. 1) is not found convincing because the claimed invention also requires the presence of chlorides (claim 14) and creatinine that are present in the Davis' medium comprising chlorides and creatinine. The fact that applicant has recognized another advantage of creatinine, for example: for detecting of *Pseudomonas* (response papers table D, page 2), cannot be the basis for patentability when the differences would otherwise be obvious. Moreover, the instant claims are directed to a composition not to the method of detecting *Pseudomonas* as argued (table D, page 22).

No claims are allowed.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vera Afremova whose telephone number is (571) 272-0914. The examiner can normally be reached from Monday to Friday from 9.30 am to 6.00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn can be reached at (571) 272-0926.

The fax phone number for the TC 1600 where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

Vera Afremova

AU 1651

February 12, 2004



VERA AFREMOVA

PATENT EXAMINER